



Oloo v Freight Forwarders Solutions (SEZ) Limited (Cause E759 of 2023) [2025] KEELRC 1754 (KLR) (13 June 2025) (Judgment)

Neutral citation: [2025] KEELRC 1754 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E759 OF 2023**

SC RUTTO, J

JUNE 13, 2025

BETWEEN

FIDEL CASTRO OLOO CLAIMANT

AND

FREIGHT FORWARDERS SOLUTIONS (SEZ) LIMITED RESPONDENT

JUDGMENT

1. Through a Statement of Claim dated 15th September 2023, the Claimant avers that he was employed by the Respondent as an Inbound Supervisor through a contract of service dated 30th December 2021.
2. According to the Claimant, he performed his contractual obligations dutifully up until 29th July 2022, when the Respondent maliciously and mischievously changed his job description from an Inbound Supervisor earning Kshs 139,000/= to a Picking Team Leader earning Kshs 90,000/=. In the Claimant's view, this decision was maliciously calculated to force a resignation from him and/or implement an illegal wage reduction. That on 1st October 2022, the Respondent confirmed the Claimant as a Picking Team Leader from 1st August 2022.
3. The Claimant avers that he diligently performed his duties as a Picking Team Leader until January 2023, when he was offered a fixed-term contract to run from 23rd January 2023 to 2nd January 2024.
4. The Claimant further asserts that on 5th July 2023, the Respondent served him with a Notice to Show Cause demanding that he explain alleged losses in a sector that was not within his docket or job description. That he was subsequently dismissed from employment after what he termed a shambolic disciplinary hearing.
5. The Claimant has contended that his dismissal was inhumane, degrading, harsh, illegal and unprocedural.
6. It is against this background that the Claimant seeks the following reliefs against the Respondent:



- a. A declaration that the Claimant was terminated unlawfully and in violation of prevailing labor laws and practices
 - b. A declaration that the Claimants employment as an inbound supervisor vide employment contract ref 89/HR12:21/PW was terminated and/or varied illegally and on grounds not based on the contract
 - c. A Declaration that the Respondent violated the Claimants rights to Fair Administration Action under Article 47 and his rights to Fair Labour Practices under Article 41 of *the Constitution* of Kenya 2010
 - d. A declaration that the Respondent violated the Claimants rights to Fair Hearing and Natural Justice as enshrined under article
 - e. General &exemplary Damages for Violation of Fundamental Rights and Freedoms enshrined in *the constitution* of Kenya 2010
 - f. A Declaration that the downgrading of the Claimants employment contract from an Inbound supervisor to picking team leader was illegal and amounted to unfair labor practices
 - g. Salary of the residual term of the contract dated 30/12/2021 at 139,000/= per month for the months of 1st August 2022 - 1st January 2023= $139000*6=834,000/=$
 - h. In the alternative to E above, the Claimant claims the difference in salary between the role of Inbound supervisor earning 139,000/=and the role of picking team leader earning 90,000/= for the residual term of the contract dated 30/12/2021 ref 89/HR12:21/PW = $((139,000-90,000)*6)=294,000/-$
 - i. Salary for the residual term of the employment contract dated 12th January 2023 being salary from August 2023-January 2023= $540,000/=$
 - j. 12 months salary for unfair dismissal= $90,000*12=1,080,000/=$
 - k. House Allowance at 15% for the entire employment period
 - l. Unremitted KRA deductions for 17 months
 - m. Exemplary damages for breach of constitutional rights
 - n. General damages for breach of employment contract
 - o. Gratuity
 - p. Any other relief the court deems just and equitable
 - q. Costs of this suit and interests thereto
7. The Respondent opposed the Claim through its Response dated 24th November 2023. Whereas the Respondent does not deny that the Claimant's designation was changed from an Inbound Supervisor to a Picking Team Leader and his salary reviewed, the Respondent contends that the Claimant was called for a meeting and by mutual agreement of both parties, his job and salary was reviewed and he was placed on probation for two (2) months. According to the Respondent, the Claimant consented, signed and conducted himself in a manner to affirm the job review and job appointment.
8. The Respondent further avers that the Claimant negligently fundamentally breached his contractual obligations as expressly and implied in his contract. That the said breach resulted in a major financial



loss to the Respondent. As such, the Claimant was issued with a Notice to Show Cause and accorded a fair hearing. That the Respondent's management concluded that the Claimant had committed gross misconduct.

9. According to the Respondent, the Claimant is not entitled to any of the remedies sought in the Memorandum of Claim. Consequently, the Respondent prays that the suit be dismissed with costs.
10. The matter proceeded for hearing on 27th January 2025 and 20th February 2025, during which both sides called oral evidence.

Claimant's Case

11. The Claimant testified on his behalf as CW1 and additionally called Mr. Alex Muia Ndeto, who testified as CW2. At the outset, the Claimant adopted his witness statement to constitute his evidence in chief. He further produced the list and bundle of documents filed alongside the Memorandum of Claim as his exhibits before Court.
12. It was the Claimant's evidence that sometime in July 2022, the Respondent maliciously claimed that he did not meet expectations in all areas of his job role as an Inbound Supervisor and decided to review his job downwards to that of a Picking Team Leader and at a lower pay.
13. Notwithstanding the malicious and baseless demotion and or review of contract by the Respondent, he discharged his duties dutifully.
14. The Claimant further averred that in furtherance of the Respondent's attempts to force a resignation from him, he was served with a Notice to Show Cause sometime in July 2023. The Notice to Show Cause did not indicate the specific allegation against him nor did it inform him of his right to call for representation, file pleadings, or shop floor for union representation.
15. He further stated that the Respondent never served him with witness statements or the evidence they intended to rely upon during the disciplinary hearing to enable him mount a substantive response or defense.
16. He responded to the Notice to Show Cause prompting a knee jerk reaction by the Respondent setting up a disciplinary hearing, which was a sham.
17. During the proceedings, he was never allowed to be accompanied by another employee or an advocate and during the hearing, witnesses were openly coached and intimidated by the Respondent.
18. The Claimant further contended that he was never informed of any rights to appeal or review the decision of the Respondent, nor was he issued a Certificate of Service at the time of his dismissal.
19. It was the Claimant's view that the decision to dismiss him was arrived at un-procedurally and without due process, was illegal, null and void. That there were no grounds reasonable or otherwise, to warrant his dismissal but for malice.
20. The Claimant added that during his employment, the Respondent did not conduct any training for its staff.
21. Alex Ndeto Muya, who testified as CW2, identified himself as a former employee of Jumra Investments Ltd. Similarly, he adopted his witness statement to constitute his evidence in chief.
22. CW2 stated that Jumra Investments Ltd had contracted the Respondent's services to deal with their products, including Colgate products. He was a supervisor in the Colgate team.



23. He is aware that the Claimant worked in the outbound team as a picker supervisor in the Night shift, reporting generally and specifically to one Peter Njoroge who was his supervisor. That the Claimant was not the decision maker and he regularly took instructions from Mr. Njoroge who was their leader and immediate boss.
24. He is also aware that Mr. Howard Mandela did not work in the outbound team or picking team, nor did he work under the Claimant. According to CW2, Mr. Mandela was a reliever in the inbound team and used to work night shifts with his role being to relieve the day shift supervisors in the inbound team who had not finished their tasks when their shift ended.
25. CW2 further stated that at no given time did he hear the Claimant issuing orders or instructions to anyone to stop scanning or tagging Colgate products or concerning any change of process. According to CW2, this would have ordinarily come from the shift leader, Mr. Njoroge. He (CW2) used to sit with the Claimant at the same space at all material times as they shared a desk, hence he would have been aware had he issued such a directive.
26. CW2 further denied addressing Mr. Mandela and informing him that "when you scan using the invoices there will be no errors and that is how it should be..." It was his contention that he never issued any advice, instructions or directions to Mr. Mandela.
27. He is aware that for a long period of time, and even before the Claimant joined the outbound team, there were issues with the invoicing of products at the Respondent. That it was regularly found that the data obtained from scanning did not tally with that on the invoices, as a result of which the Respondent scanning team resorted to manual verification. This was long before the Claimant joined the outbound team, whose issues were within the knowledge of the Respondent and Mr. Njoroge, who supervised the scanning team.
28. That despite the challenges aforesaid, the Claimant always advised the load checkers out of abundance of caution to scan the products per invoice.
29. In CW2's view, it was clear discrimination and bias for the Respondent to blame the Claimant for allegations of issuing instructions to change the process to his juniors, yet they spared his supervisor, Mr. Njoroge, who was directly in charge of the scanning team.
30. He (CW2) knew the Claimant to be a diligent and extremely hard-working person who resonated well with his peers, juniors and superiors at work and was always willing to learn.

Respondent's Case

31. The Respondent called oral evidence through Mr. Howard Mandela and Ms. Ibtisam Balala who testified as RW1 and RW2 respectively. Mr. Mandela, who was the first to go, identified himself as an Operations Clerk at the Respondent company. Equally, he adopted his witness statement together with the supplementary list and bundle of documents filed on behalf of the Respondent to constitute his evidence in chief.
32. In his evidence, RW1 averred that the Claimant was employed as a picking supervisor and he was his (RW1) direct supervisor.
33. RW1 averred that his responsibilities included scanning all outbound products before the products left the warehouse and into the trucks that were out for dispatch.
34. That he (RW1) executed his duties dutifully alongside the inbound scanning team and ensured all is well on that front.



35. That on 13th April 2023, when he joined the inbound team for the scanning process of Colgate products, he found out that the outbound team had stopped the process of scanning the Colgate products. When he asked his colleagues, they informed him that the Claimant, who was their supervisor, had instructed them not to do outbound scanning anymore. That the Claimant had informed them that the outbound products would be subjected to a new method of verification, which was to spread all Colgate products on pallets and to individually confirm each product one by one with the relevant invoice. This new process substituted the scanning process.
36. RW1 further averred that he was informed that the Claimant was putting in place the new process because the old process of scanning was too time-consuming and some items were not being loaded and left in the warehouse.
37. He (RW1) was confused by the new process in place, but he obeyed the commands of his supervisor and started doing what the Claimant had instructed them to do. He did not question the Claimant as he was the supervisor and normally spoke on behalf of the senior management of the Respondent company.
38. They believed that the new process for outbound products was a decision made by the management. Therefore, they did not want to disobey the direct commands of their employer instructing them through the supervisor.
39. The following day, he was assigned to load Colgate products and when he asked the Claimant why they were not following the old scanning process, the Claimant affirmatively told him that the new process was faster than the scanning process. That the new process of manually checking the products was the new process they would follow moving forward.
40. On 13th June 2023, he was approached by his Shift Manager, who asked if they were still scanning outbound Colgate products, to which he responded by saying that the procedure for the outbound products had been changed and communicated to them through the Claimant. His Shift Manager told him he was not aware of such a change in procedure. It was at that point that he was made aware that the management of the Respondent company had in fact, not authorized the changes effected by the Claimant and was not even aware that the outbound scanning was not taking place.
41. On 5th July, 2023, the management of the Respondent company asked him to show cause why he had not been following the set process of the outbound scanning procedure. He explained all that had happened in a detailed statement.
42. Ms. Ibtisam Balala who testified as RW2, started by adopting her witness statement to constitute her evidence in chief. She proceeded to produce the list and bundle of documents filed on behalf of the Respondent as exhibits before Court.
43. It was RW2's evidence that during the pendency of the Claimant's employment, his performance was appraised and found to be unsatisfactory as he could not meet the set deadlines, did not meet targets, had challenges prioritizing his work and also had challenges communicating with his team among other shortcomings despite undergoing WMS Trainings.
44. As a result of the unsatisfactory performance, the Claimant was invited for a probation review meeting in which he was informed of his shortcomings in performing his contractual obligations.
45. The Respondent Company also offered the Claimant further training and support and welcomed him to suggest any further training that he could recommend.



46. RW2 averred that this unsatisfactory performance review resulted in the Claimant's probationary period being extended by an additional three (3) months to give him an opportunity to improve on his performance in the aforementioned areas.
47. The Respondent also accorded guidance and training to the Claimant during the extended probationary period on how to improve the conduct of his mandate. In addition, he was taken through several training exercises to aid in the same.
48. Upon the lapse of the extended period, another review was conducted to again assess the performance of the Claimant's duties. Unfortunately, there was little to no improvement in terms of his work output, competence in undertaking his roles and his interpersonal skills in relating with fellow employees.
49. Rather than terminate the Claimant's employment in totality, the Claimant was informed that due to his unsatisfactory performance and execution of his contractual duties, the Respondent Company was considering assigning him another role, of a Picking Team Leader, in which he would be better suited.
50. The Claimant was also informed that, given the job review, his salary would also be reviewed.
51. It was RW2's evidence that the Claimant wholeheartedly accepted this new role and signed the job review and salary contracts. He was also informed that he would be placed in a probationary period of two (2) months, which was an express term in the employment contract.
52. The Claimant was informed that the salary would be a consolidated pay, which included a monthly house allowance.
53. On 12th January 2023, the Claimant's job role of a Picking Team Leader was renewed.
54. RW2 further testified that the contract of employment between the Claimant and the Respondent had an express clause that provided for termination of employment for several reasons, among them, gross misconduct by the employee.
55. The Claimant was further informed of his job description and key responsibilities which were subject to any other duty that may be assigned by management from time to time. The Claimant acknowledged and signed the job description form.
56. According to RW2, the Claimant consented to this new job role and went ahead to execute his newly assigned duties and had been receiving the renewed salary without complaint from October 2022 to July 2023.
57. Upon the lapse of the two (2) month probationary period, the Claimant was called to a performance review meeting to assess his performance. Contrary to the Claimant's averments, his work performance was not at all exemplary.
58. RW2 further averred that during the conduct of his supervisory duties, the Claimant acted negligently by neglecting to properly perform his contractual obligation, which resulted in the incurring of major financial losses for the Respondent Company.
59. That on 29th July 2022, following gross misconduct and breach of his contractual obligations, the Claimant was served with a letter to show cause why he should not be dismissed from employment for gross misconduct, expressly stated and was later called for a disciplinary hearing to discuss the same.



60. The Notice to Show Cause dated 5th July 2023 expressly stated that the outbound scanning process of all Colgate products was stopped for over one month, thus exposing the Respondent Company to huge stock loss, a role that was part of the Claimant's job description.
61. At the hearing, the Claimant firstly indicated that following up on load auditors was not part of his job description, but he later admitted that he directed his subordinate employees to skip the process of scanning outgoing merchandise, indicating that it was slowing down the shipping process.
62. He further admitted that failure on his part to inform his senior employees regarding the scanning issue was a negligent lapse on his part.
63. The Claimant was informed that there were express standards of operations and procedures set by the Respondent Company for a reason and change, if any, was communicated in writing.
64. The Claimant was further informed that his negligent act of gross misconduct and failure to execute his duties as communicated resulted in major financial loss and the loss of a long-standing relationship between the Respondent and their longest-serving and most loyal clients.
65. The Claimant was accorded a fair hearing and the Respondent management deliberated and concluded that the Claimant had committed gross misconduct.
66. RW2 further averred that the Respondent management informed the Claimant of his rights to representation at the hearing and the available avenues of appeal, which he decided not to exercise.

Submissions

67. It was the Claimant's submission that RW1 relied on office rumours to blame him in his response to the Notice to Show Cause. That in essence, he was convicted and terminated based on hearsay evidence.
68. It was further submitted by the Claimant that the Respondent's actions were wrongful and unjustified and were made on no factual basis but unsubstantiated allegations, mere speculations and rumours. In the Claimant's view, such grounds are not reasonable grounds for terminating an employee.
69. Citing the case of Gilbert Mariera Makori v Equity Bank Limited [2016] eKLR, the Claimant submitted that he was not given sufficient notice of the disciplinary hearing. That he was invited for a disciplinary hearing at 6.30 PM for a hearing taking place the following day at 7:00 PM. He argued that this insufficient period for him to prepare adequately for the disciplinary hearing or shop floor for representation. According to the Claimant, this flew against his rights to a fair hearing and fair administrative action.
70. It was the Claimant's further submission that the Respondent never supplied him with the evidence, statements and materials they relied on in the disciplinary hearing. That this was never done at the point of invitation to the hearing or at the hearing itself.
71. The Claimant further posited that he was not informed of any right of review or appeal, thus offending the Fair Administrative Action Act, rendering the disciplinary hearing and process unfair.
72. It was further submitted by the Claimant that his demotion was unfair and constituted an unfair labour practice.
73. On its part, the Respondent submitted that it met the requirements of Section 45 of the Employment Act by proving that the reason for the Claimant's termination was valid.
74. According to the Respondent, it proved that the Claimant's conduct amounted to gross misconduct and that it followed the due procedure in terminating his employment. In support of the Respondent's



position, reliance was placed on the case of *Nita Sangari Baldev v Milly Glass Works Limited* [2019] eKLR and *Cooperative bank of Kenya limited v Banking Insurance & Finance Union (K) COA CA No.293 of 2015* Nairobi.

75. The Respondent further submitted that it fully complied with the requirements of fair procedure provided under Section 41 of the *Employment Act*. On this issue, reliance was placed on *Meshack Auta Ongeri V Nyamache Tea Factory Company Limited* (2019) eKLR and *Kenya Ports Authority v. Fadhil Juma Kisuwa* [2017] eKLR.
76. The Respondent stated in further submission that the Claimant's allegations that his job review was animated by ulterior motives camouflaged as poor or unsatisfactory performance are unfounded, unsubstantiated and false.
77. Referencing the case of *Serah Njeri Mwobiv John Kimani Njoroge* (2013) eKLR, the Respondent posited that the Claimant is estopped by his conduct from claiming the difference in salary between the role of Inbound Supervisor and Picking Team Leader.
78. It was the Respondent's view that the Claimant's claim is an afterthought designed to malign and punish the Respondent's good will of opting to review his job role and salary as opposed to terminating his employment altogether for his failure to meet the quality of work, competence and interpersonal skills.

Analysis and Determination

79. The Court has considered the pleadings by both parties, the evidentiary material on record as well as the rival submissions, and isolated the following issues for determination:
 - i. Whether the Respondent has proved that there was a justifiable reason to dismiss the Claimant from employment;
 - ii. Was the Claimant accorded procedural fairness prior to being dismissed from employment?
 - iii. Whether the change of the Claimant's role and salary review was lawful;
 - iv. Is the Claimant entitled to the reliefs sought?

Justifiable reason?

80. As can be discerned from the Claimant's letter of summary dismissal, he was dismissed from employment on grounds of gross misconduct in that he changed the Standard Operating Procedure (CP outbound scanning) without management approval and later denied it. It was further alleged that as a supervisor and having security background, the Claimant ought to have picked up the issue that the CP products were not being scanned since April 2023 and even after his junior raised the concern with him, he did not make any follow-up or correct the anomaly and as a result, there was serious stock loss.
81. In his response to the Notice to Show Cause, the Claimant refuted the allegations leveled against him. He stated that he had advised the load checker to scan the products per invoice to avoid cases of products not being loaded. To this end, he shifted blame to the operations clerk for loading unscanned products and failing to seek clarification. According to the Claimant, the said clerk knew what should be done and was trusted with the process. The Claimant further protested that the said clerk was not being sincere and was using his name to defend himself.



82. CW2 who testified in support of the Claimant's case, stated that he never heard the Claimant issuing orders or instructions to anyone to stop scanning the Colgate products. That if such instructions were ever issued, they were not from the Claimant but his supervisor, Mr. Peter Njoroge.
83. In his testimony before Court, RW1 who identified himself as an Operations Clerk in the Respondent company, stated that the Claimant had stopped the outbound scanning process of the Colgate products and introduced a new process of manually checking the products against the invoice without scanning.
84. From the record, the Claimant and RW1 were issued with Notices to Show Cause dated 5th July 2023. In this regard, RW1 was alleged to have stopped the scanning of Colgate products for more than one (1) month without authorization from his supervisor or manager.
85. In his response to the Notice to Show Cause, RW1 stated that it is the Claimant who had issued instructions stopping the scanning process of the Colgate products and instead, had introduced a manual process of verification of the said products.
86. It is therefore apparent that the Claimant and RW1 blamed each other in their respective responses to their Notices to Show Cause. This was a classic case of "he said, she said". The conflicting version of events presented by the Claimant and RW1 was further compounded by the testimony of CW2, who was categorical that he worked closely with the Claimant and never heard him issue any instructions with respect to the change of the standard operating procedures.
87. Therefore, what now presents before the Court is a credibility contest between the Claimant and RW1.
88. It is notable from the record that besides the statement of RW1, there is no independent evidence relied on by the Respondent in holding the Claimant culpable.
89. Seemingly, the disciplinary panel adopted RW1's version of events hook, line, and sinker and did not subject the same to further verification before drawing its own conclusion on the Claimant's culpability. I say so, bearing in mind that in this case, RW1 was also on the chopping board, hence it was prudent for the Respondent to independently verify RW1's claims against the Claimant to allow for an objective conclusion.
90. Under Sections 43(1) and 45 (2) (a) and (b) of the *Employment Act*, an employer bears the burden of proving the reasons for an employee's termination and failure to do so, such termination is deemed to be unfair. In this regard, such reasons ought to be fair, valid and related to the employee's conduct, capacity or compatibility, or based on the operational requirements of the employer.
91. Applying the aforementioned statutory provisions to the case herein, it follows that the Respondent was required to prove on a balance of probabilities that the Claimant changed the standard operating procedure without approval from the Respondent's management or his supervisor.
92. In light of the conflicting testimonies presented by the Claimant and RW1, and bearing in mind that there is no independent evidence on record to corroborate the evidence of RW1 that it is the Claimant who changed the standard operating procedure, this Court is not satisfied that the Respondent has discharged its evidential burden under Sections 43(1) and 45(2) (a) and (b) of the *Employment Act*.
93. In its submissions, the Respondent has stated that the Claimant admitted to the allegations in the Notice to Show Cause in that he never focused much on the loading. A look at the Claimant's job description indicates that his primary role was to coordinate picking activities in the warehouse and ensure picking accuracy is maintained across all orders.



94. Indeed, it is not clear from the Claimant's job description that his responsibilities extended to supervising the loading process. As such, his statement that he did not focus much on loading cannot be reasonably taken to amount to dereliction of duty on his part.
95. All in all, the Court finds that the Respondent has not proved to the required standard that there was a justifiable cause to warrant dismissal of the Claimant from employment.

Procedural fairness?

96. Section 45 (2) (c) of the *Employment Act* requires an employer to prove that an employee's termination from employment was in accordance with fair procedure. Section 41 of the *Employment Act* makes specific requirements with regards to the process to be complied with by an employer. This process entails notifying the employee of the allegations levelled against him or her and thereafter granting him or her the opportunity to make representations in response to the said allegations in the presence of a fellow employee or a shop floor union representative of his or her choice.
97. It is not contested that the Claimant was issued with a Notice to Show Cause dated 5th July 2023 and that he tendered a response dated 6th July 2023. It is also not in dispute that the Claimant attended a disciplinary hearing on 17th July 2023.
98. The Claimant's contention is that he was not allowed to be accompanied by another employee during the disciplinary hearing. This position has been disputed by the Respondent. In his testimony in Court, RW2 stated that the Claimant was informed of his right to representation. Despite this assertion, there is no evidence on record confirming as much.
99. Indeed, there is no evidence that in being invited to attend the disciplinary hearing, the Claimant was advised of his entitlement under Section 41 of the *Employment Act* to be accompanied by a fellow employee of his choice. To this end, the Respondent is at fault, seeing that it was bound to prove under Section 45(2) (c) that the termination of the Claimant from employment was in accordance with a fair procedure.
100. The Claimant has further impugned the process applied by the Respondent on the basis that he was never supplied with the statements and or evidence relied upon by the Respondent during the disciplinary hearing.
101. It is evident from the record that RW1 incriminated the Claimant in his response to the Notice to Show Cause. Be that as it may, RW1's statement was not shared with the Claimant ahead of the disciplinary hearing.
102. No doubt, RW1's statement was relevant and significant during the hearing of the Claimant's disciplinary case, seeing that he was found culpable based on the testimony of RW1.
103. On this issue, the Court concurs with the sentiments expressed by the Court in the case of *Rebecca Ann Maina & 2 others v Jomo Kenyatta University of Agriculture and Technology* [2014] eKLR, that the employee is entitled to documents in the possession of the employer which would assist them in preparing their defence.
104. Ultimately, the Court finds that the Respondent did not act fairly by withholding crucial evidentiary material from the Claimant.
105. For the foregoing reasons, the Court finds that the Respondent did not act in accordance with justice and equity in terminating the Claimant's employment hence did not comply with the spirit of a fair hearing as envisaged under Section 41 of the *Employment Act*.



Change of Role and Salary Review

106. It is the Claimant's case that the Respondent maliciously reviewed his job downwards from an Inbound Supervisor to a Picking Team Leader at a lower pay.
107. The Respondent has not refuted this position. Its only contention is that the Claimant's performance during the probationary period was unsatisfactory hence instead of being terminated, he was informed that the Respondent was considering assigning him another role of a Picking Team Leader. That the Claimant wholeheartedly accepted this new role and signed the job review and salary contracts.
108. Section 10(5) of the *Employment Act*, which is relevant in the resolution of this issue, provides as follows:
- “[10](5) Where any matter stipulated in subsection (1) changes, the employer shall, in consultation with the employee, revise the contract to reflect the change and notify the employee of the change in writing.”
109. From the record, the Claimant was issued with a letter dated 29th July 2022, referenced: “Review of Job Role and Salary”, which is couched as follows:
- “Following end (sic) of your probation and extension of your probation period review meeting that you had with your line manager, this letter is to notify you that you did not meet the expectations in all areas of your job roles in terms of quality of work, competence and interpersonal skills/relationships with others. Due to the above, Freight Forwarders Solutions Limited has decided to offer you a different job role. Therefore, your job title has been changed from Inbound Supervisor to a Picking Team Leader which is a Junior Management Level C (JM-C) grade. Consequently, your salary will be revised accordingly to match the new role.”
110. To this end, the Claimant was offered a new position with the Respondent company and issued with fresh terms of service, including probation for a period of two (2) months.
111. The Claimant signed the new contract on 4th August 2022, confirming his acceptance of his appointment as a Picking Team Leader. Subsequently, his performance during the probation as a Picking Team Leader was reviewed and he was confirmed in his job role vide a letter dated 6th October 2022. Consequently, the Claimant signed the letter confirming his appointment as a Picking Team Leader. Indeed, it is not in dispute that he served in the said position and earned the salary attached to the said position until he was dismissed from employment on 24th July 2023.
112. There is no evidence on record to suggest or indicate that prior to his dismissal from employment, the Claimant protested the change of his role and salary review.
113. Therefore, from the facts herein, it is clear that the Claimant's job role and salary review was effected with his consent in writing in accordance with the provisions of Section 10 (5) of the *Employment Act*.
114. This being the case, the Claimant cannot now turn around and disown the new terms of employment which evidently, he consented to.

Reliefs?

115. As the Court has found that the Respondent has not proved that there was a justifiable reason to terminate the Claimant's employment and in effecting the said termination, did not comply with



the spirit of a fair hearing as envisaged under Section 41 of the *Employment Act*, the Court awards him compensatory damages equivalent to five (5) months of his salary. This award further takes into account the length of the employment relationship between the parties as well as the circumstances under which the Claimant was terminated from employment.

116. With respect to compensation for breach of the Claimant's constitutional rights, the Court adopts the position taken in the case of *NEC Corporation v Samuel Gitau Njenga* [2018] eKLR, thus; "the court does not think however that violation of every conceivable contractual statutory and constitutional right deserves a separate award of damages." As such, the said relief is declined.
117. The claim for salary for the residual of the Claimant's contract of employment is equally declined for being anticipatory in nature. In arriving at this finding, I am guided by the determination of the Court of Appeal in the case of *D K Njagi Marete v Teachers Service Commission* [2020] eKLR, where it was held while the employee was employed on permanent and pensionable terms, this, of itself, is not an indication that he would have continued to be employed until the age of 60 years. The same position applies to fixed-term contracts as the one herein.
118. The claim for house allowance is equally declined as the Claimant's salary was consolidated. Section 31(2) of the Act envisages salary consolidation where then, the employer is not expected to pay a separate amount as house allowance. As such, it is clear that as per the Claimant's contract of employment, the component of house allowance was subsumed in his consolidated salary.
119. The claim for gratuity is also declined as the same is contractual. In this case, the Claimant's contract of service did not provide for payment of gratuity. Therefore, there is no basis for awarding gratuity.

Orders

120. In the final analysis, Judgment is entered in favour of the Claimant against the Respondent as follows:
 - a. A declaration that the termination of the Claimant from employment was unfair and unlawful.
 - b. The Claimant is awarded compensatory damages in the sum of Kshs 450,000.00 being equivalent to five (5) months of his last salary.
 - c. Interest on the amount in (b) at court rates from the date of Judgment until payment in full.
 - d. The Claimant shall also have the costs of the suit.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 13TH DAY OF JUNE 2025.

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STELLA RUTTO
JUDGE

In the presence of:

For the Claimant Mr. Outa

For the Respondent Ms. Nzisa

Court Assistant Millicent

Order



In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE

